

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
DOCKET NO. 2004-42-C**

In the Matter of)
)
Joint Petition for Arbitration of)
)
NEW SOUTH COMMUNICATIONS CORP.,)
NUVOX COMMUNICATIONS, INC.)
KMC TELECOM V, INC., KMC TELECOM)
III LLC, and XSPEDIUS COMMUNICATIONS,)
LLC on Behalf of its Operating)
Subsidiaries XSPEDIUS MANAGEMENT CO.)
SWITCHED SERVICES, LLC, XSPEDIUS)
MANAGEMENT CO. OF CHARLESTON, LLC,)
XSPEDIUS MANAGEMENT CO. OF)
COLUMBIA, LLC, XSPEDIUS)
MANAGEMENT CO. OF GREENVILLE,)
LLC, and XSPEDIUS MANAGEMENT CO.)
OF SPARTANBURG, LLC)
)
Of an Interconnection Agreement with)
BellSouth Telecommunications, Inc.)
Pursuant to Section 252(b) of the)
Communications Act of 1934, as)
Amended)

JOINT MOTION FOR WAIVER

NewSouth Communications Corp. (“NewSouth”); NuVox Communications, Inc. (“NuVox”); KMC Telecom V, Inc. (“KMC V”) and KMC Telecom III LLC (“KMC III”) (collectively, “KMC”); and Xspedius Communications, LLC on behalf of its operating subsidiaries Xspedius Management Co. Switched Services, LLC (“Xspedius Switched”), Xspedius Management Co. of Charleston, LLC (“Xspedius Charleston”), Xspedius Management Co. of Columbia, LLC (“Xspedius Columbia”), Xspedius Management Co. of Greenville, LLC

(“Xspedius Greenville”), and Xspedius Management Co. of Spartanburg, LLC (“Xspedius Spartanburg”) (collectively “Xspedius”) (collectively, the “Joint Petitioners” or “CLECs”), by their attorneys and pursuant to Section 252(b) of the Communications Act of 1934, as amended (the “Communications Act”); S.C. Code Section 58-9-280(D); S.C. Code of Regulations 103-601(3) and 103-803, and other applicable statutes, rules and regulations, and decisions hereby file with the South Carolina Public Service Commission (the “Commission”) this Joint Motion for Waiver (the “Joint Motion”) seeking a limited waiver of application of the nine month time frame established in Section 252(a)(4)(C) of the Communications Act for Commission resolution of the issues presented in the above-captioned arbitration proceeding. BellSouth Telecommunications, Inc. (“BellSouth”) consents to and supports the relief requested in this Motion. As set out herein, compliance with the nine month time frame would produce unusual hardship and difficulty for all parties involved and for the Commission, and granting a waiver would clearly be in the public interest.

In support of this Joint Motion, the Joint Petitioners state as follows:

I. BACKGROUND

1. Joint Petitioners filed the above-captioned Joint Petition for Arbitration of an interconnection agreement with BellSouth pursuant to Section 252(b) of the Communications Act on February 11, 2004. As stated in the Joint Petition, BellSouth provided to the Joint Petitioners requests for negotiation of a new interconnection agreement. Negotiations began on September 6, 2003. The window for filing a formal request for arbitration under Section 252 of the Communications Act opened on January 17, 2004, and closed on February 11, 2004.

2. Section 252(a)(4)(C) provides that the Commission must resolve each issue set forth in the Joint Petition (as well as those raised in BellSouth’s response) within nine

months of the request for an commencement of negotiations. Given the September 6, 2003 commencement date, the statutory deadline under Section 252(a)(4)(C) would be on or about June 6, 2004. Accordingly, this Joint Motion seeks a 3-month extension of that deadline to on or about September 6, 2004

3. In the event that a state commission fails to act within the nine month window, either party may request that the Federal Communications Commission (“FCC”) preempt the state’s jurisdiction and decide the pending matters.

4. Joint Petitioners are informed and believe that the Commission has traditionally adhered to the nine month window.

ARGUMENT

5. First, a consequence for a state commission’s decision not to act within the nine-month time period is that either party may notify the Federal Communications Commission which can preempt the state’s jurisdiction and consider the pending matters itself.

6. Second, a waiver of the nine-month window would be consistent with South Carolina law, which requires that the Commission resolve all issues within nine months of the filing of the petition for arbitration. *See* S.C. Code Ann. § 58-9-280(D).

7. Third, it is clear as a practical matter that Section 252(a)(4)(C) of the Act does not bar this Commission from granting this Joint Motion, based upon the experience of parties in other states. It is fairly common practice across the BellSouth region and elsewhere for parties, including CLECs, BellSouth and state commission staffs, to voluntarily waive application of the nine-month deadline set forth in Section 252(a)(4)(C). Indeed, it is fair to state that this is routine practice in numerous southeastern states, including Florida, Louisiana and North Carolina, and Alabama.

8. Specifically, the statutory deadline appears to have been waived in ongoing arbitration proceedings involving ITC^DeltaCom and BellSouth in Alabama, Florida, Georgia, Louisiana, North Carolina and Tennessee.

9. As these instances demonstrate, waiver is appropriate in circumstances where no party opposes its application. After all, the nine-month deadline exists for the benefit of the parties to the arbitration – to provide assurance that the arbitration will be decided within a definite time frame. Where, as in this case, the parties are comfortable with working beyond such a deadline, no party would be prejudiced by grant of a waiver, and in light of the circumstances described below, waiver is clearly in the public interest.

10. Similarly, state and federal law gives parties the right to agree to waive any number of procedural and substantial rights. For example, parties may agree to waive their right to a jury trial. Parties may also enter into an agreement to toll a particular statute of limitations. In this case, waiver will take no substantive rights away from the parties. The Commission will still hear and decide the issues, just within an extended time frame.

11. Further, current circumstances affecting all parties, as well as the Commission and its Staff, demonstrate that a grant of the proposed waiver would be in the best interest of all parties, Staff and this Commission, as it would ensure that adequate resources could be devoted to the broad list of issues set for resolution by the Commission without the undue time pressures associated with the nine month deadline.

12. The current circumstances include an extraordinary confluence of proceedings requiring a hearing by this Commission within the next few months. Perhaps the most demanding of these proceedings, which includes the Commission Staff, BellSouth and Joint Petitioners as parties and participants, is the ongoing implementation proceeding for the FCC's

Triennial Review Order. The Commission also has pending before it an interconnection agreement arbitration involving BellSouth and Level 3.¹ Joint Petitioners are also informed and believe that Verizon South has filed a third request for arbitration that may involve each CLEC and Commercial Mobile Radio Service (“CMRS”) provider with which Verizon interconnects.

13. Also on the Commission’s near-term agenda are a number of other proceedings that have been rescheduled to take place after March 3rd (e.g. Public Interest Payphone Docket, the Universal Service Fund, Chem-Nuclear), such as the Commission’s regularly scheduled hearing calendar of telecommunications, energy, water and sewer and transportation matters.

14. Necessarily, proceedings outside of South Carolina also will have an impact on the above-captioned arbitration proceeding. Similar Joint Petitions for Arbitration have been filed by Joint Petitioners in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina and Tennessee.² *Triennial Review* impairment proceedings and other arbitrations also will be ongoing in these states. Joint Petitioners’ anticipate that their witnesses largely will be the same across all these proceedings. Thus, the avoidance of scheduling conflicts, which will require a high degree of coordination in any event, likely will be made more severe if waivers, such as that proposed in the Joint Motion, are not implemented or granted.³

¹ It is the Joint Petitioners’ understanding that Level 3, with similar agreement by BellSouth not to oppose, will be filing a motion similar to this Joint Motion today.

² NuVox is not a Joint Petitioner in Alabama, Louisiana or Mississippi, as it does not currently operate in those states.

³ Joint Petitioners already have indicated their consent to waive the nine-month deadline in separate petitions filed before the Alabama and North Carolina commissions. It is anticipated that similar consents will be made in other states, as procedural issues are addressed.

15. Joint Petitioners and BellSouth agree that they will neither (1) request the FCC to act to preempt the Commission's jurisdiction over this matter prior to the expiration of the extended deadline; nor 2) use the Commission's decision not to act within the original nine-month timeframe as grounds for appeal of the Commission's resolution of the issues in this matter.

WHEREFORE, the Joint Petitioners, with the consent and support of BellSouth, respectfully request that the Commission issue an order granting this Joint Motion, issue an order extending the timeframe for resolving the unresolved issues in the above-captioned proceedings for three months, until on or about September 6, 2004, and grant such other relief as is just and proper.

Respectfully submitted,

By: _____/S/
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